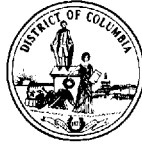


GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT



Application No. 13318 of Leo M. and Norman Bernstein, pursuant to Paragraph 8207.11 of the Zoning Regulations, for a variance from the use provisions (Section 4101) to establish a parking lot in an SP-2 District at the premises 710 - 5th Street, N.W., (Square 486, Lots 813-816 and 820).

HEARING DATE: July 30, 1980  
DECISION DATE: September 3, 1980

FINDINGS OF FACT:

1. The subject lots are located on the west side of 5th Street between G and H Streets, N.W. and are known as premises 710 - 5th Street, N.W. The subject property is in an SP-2 District.

2. In BZA Order No. 7011, dated November 20, 1962, permission was granted to establish one of the subject lots, Lot 820, as a parking lot to be used in conjunction with an existing lot at 710 - 5th Street, N.W. Permission was granted for one year. The Certificate of Occupancy expired on November 20, 1963. No further Certificate of Occupancy was issued on Lot 820.

3. The applicant failed to establish Certificates of Occupancy for the other subject lots, 813 through 816. The applicant testified that the Lots 813 through 816 have been operated as a parking lot since 1956. It ceased operation in February, 1980 when the lessee of the subject property was advised by the Zoning Review Branch that there was no Certificate of Occupancy for the subject property to be used as a parking lot. The applicant owned the subject property during all these years and executed leases for the use of the land as a parking lot.

4. The lot would be operated five days a week during the hours of 8:00 a.m. to 6:00 p.m. There would be valet parking. The parking lot would provide fifty spaces. The applicant testified that the lot would serve short term users, mostly persons who frequented the Courts which are located in the immediate area.

5. The subject property has been on the market for two years. The applicant does not plan to develop the land but to sell it.

6. Paragraph 4101.41 of the Zoning Regulations provides that a parking lot in existence on October 5, 1978 under approval of the BZA may be permitted by the Board to continue in existence for a period not to exceed four years from the date that the present Certificate of Occupancy expires under certain provisions. The BZA shall not have authority under this paragraph to approve the establishment of any new parking lot.

7. At the close of the public hearing the record was left open for the applicant to submit a memorandum in support of the application. In a memorandum dated August 20, 1980 the applicant argued that Lots 813 through 816 are entitled to be operated as a parking lot as a matter of right since they constitute non-conforming uses. The applicant requested that the Board approve Lot 820 since it is accessory to the other four lots and that Lot 820 had been approved as a parking lot use for the last eighteen years by BZA Order No. 7011 and has been used as such for that time.

8. The Board, in reply to the applicant's memorandum, finds that the definition of non-conforming use, as set forth in Subsection 1202 of the Zoning Regulations, provides that such a use was "lawfully existing at the time these regulations became effective." Since there is no record of a Certificate of Occupancy ever having been issued for such use, and since the applicant produced no such Certificate of Occupancy, the parking lot was not a lawful use in 1958. The mere use of land over a period of years does not constitute a lawful existence. As to Lot 820, the order in Case No. 7011 provided as a condition "permit shall issue for a period of one year only, but shall be subject to renewal in the discretion of the Board upon the filing of a new approval in the manner prescribed by the Zoning Regulations." There is no evidence that such new appeal was ever filed or that the Board approved continuation of the lot beyond the original one year period. The approval for use of Lot 820 as a parking lot thus expired one year after the approval granted in 1962.

9. There is no evidence or testimony in the record to suggest that the property is exceptionally narrow or shallow or is affected by some exceptional topographical condition or other extraordinary or exceptional condition which would qualify it for a variance.

10. The owner of the building did not appear and testify. His representative did not cite to the Board any hardship which the owner would incur if the application were denied and the Zoning Regulations were strictly applied.

11. There was no report from Advisory Neighborhood Commission 2C.

CONCLUSIONS OF LAW AND OPINION:

Based on the record the Board concludes that the applicant has failed to establish that the subject lots were operating as a parking lot on October 5, 1978 under a valid Certificate of Occupancy. The Board pursuant to Paragraph 4101.41 of the Zoning Regulations cannot therefore continue the use of the lots for parking purposes. The Board further concludes that except for the one year period, 1962 to 1963, and that for Lot 820 only, the applicant has failed to prove that the subject parking lot ever had a Certificate of Occupancy. It follows that what is before the Board is an illegal parking lot. It has no legal existence as a parking lot. Under Paragraph 4101.41 of the Zoning Regulations, the Board is precluded from approving the establishment of any new parking lot. The Board therefore concludes that the application must be considered as a use variance, the granting of which requires the showing of an undue hardship upon the owner arising out of some exceptional or unique condition of the property. The Board concludes that the applicant has demonstrated nothing unusual about the site, and has presented no evidence that strict application of the Regulations would constitute a hardship upon the owner. The application has failed to meet his burden of proof, and the application cannot be granted. It is therefore ORDERED that the application be DENIED.

VOTE: 3-1 (Charles R. Norris, Connie Fortune and Leonard L. McCants to deny, William F. McIntosh opposed by proxy).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:

  
STEVEN E. SHER  
Executive Director

FINAL DATE OF ORDER: 10 NOV 1980

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."